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8 UNITED STATES DISTRICT COURT – SOUTHERN DISTRICT OF
 9 CALIFORNIA

10
 11 CHAD MCKINNEY, an individual,
 12 Plaintiff,

13 v.

14 APOLLO GROUP, INC.,
 15 UNIVERSITY OF PHOENIX, a
 Corporation, MECHELLE
 16 BONILLA, an Enrollment Manager
 at UNIVERSITY OF PHOENIX,
 KYAN FLYNN, Director of
 17 Enrollment at UNIVERSITY OF
 PHOENIX, APRIL ALCORN, an
 Employees Relations Consultant at
 UNIVERSITY OF PHOENIX,
 18 CARLYN LINDSTEN, Associate
 Director of Enrollment at
 UNIVERSITY OF PHOENIX

19
 20 Defendants
 21
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 23
 24

25 CASE NO. 07-CV-2373 WQH CAB

26 **NOTICE OF MOTION AND
 MOTION TO SET ASIDE ENTRY
 OF DEFAULT AGAINST KYAN
 FLYNN, MECHELLE BONILLA
 AND CARLYN LINDSTEN**

27 **[FRCP 55(c)]**

28 **NO ORAL ARGUMENT, UNLESS
 REQUESTED BY THE COURT**

Date: April 21, 2008

Time: 11:00 a.m.

Courtroom: 4

Judge: Hon. William Q. Hayes

DATE OF FILING: December 19, 2007

25 TO PLAINTIFF AND HIS ATTORNEY(S) OF RECORD:
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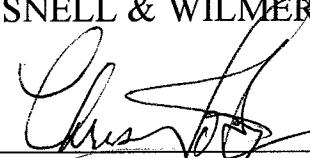
1 PLEASE TAKE NOTICE that on April 21, 2008 at 11:00 a.m., or as soon
 2 thereafter as counsel may be heard by the above entitled Court, located at 940 Front
 3 Street, San Diego, California 92101, Courtroom 4, defendants Kyan Flynn,
 4 Mechelle Bonilla and Carolyn Lindsten (the "Individual Defendants") will and
 5 hereby do move the Court pursuant to Rule 55(c) of the Federal Rules of Civil
 6 Procedure ("FRCP") to set aside the Court Clerk's entry of default entered on
 7 March 13, 2008 ("Default").

8 This action is brought on the following grounds: (1) The Default is void
 9 since the Individual Defendants never received notice of the action before the
 10 answer was due; (2) The Court lacks jurisdiction over the Individual Defendants
 11 since the Individual Defendants were never properly served and therefore could not
 12 respond before the answer was due; and/or (3) the Individual Defendants
 13 reasonably believed, but were mistaken, that they had not been given actual notice
 14 and were properly served so that they should be relieved from the Default.

15 This motion is based on this notice of motion and motion, the memorandum
 16 of points and authorities, the declarations of Nathan W. Hicks, Kyan Flynn,
 17 Mechelle Bonilla and Carolyn Lindsten filed herewith, and supporting exhibits
 18 thereto, the Court's files in this matter, all supporting documents, evidence and oral
 19 argument before this Court at the time of the hearing, and any other matter properly
 20 before the Court.

21 This motion is made following a reasonable and good-faith attempt to
 22 conference with plaintiff.

23 Date: March 20, 2008

24
 25 SNELL & WILMER L.L.P.
 26 By: 
 27 Christy Joseph
 28 Nathan W. Hicks
 Attorneys for Apollo Group, Inc.

McKinney v. Apollo Group, Inc., et al.
USDC, Southern – Case No. 07-CV-2373

PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 600 Anton Boulevard, Suite 1400, Costa Mesa, California 92626-7689.

On March 20, 2008, I served, in the manner indicated below, the foregoing document described as

**NOTICE OF MOTION AND MOTION TO SET ASIDE ENTRY OF DEFAULT
AGAINST KYAN FLYNN, MECHELLE BONILLA AND CARLYN
LINDSTEN**

on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, at Costa Mesa, addressed as follows:

I am employed in the office of a member of the bar of this court at whose direction the service was made.

Please See Attached Service List

- BY REGULAR MAIL: I caused such envelopes to be deposited in the United States mail at Costa Mesa, California, with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the United States Postal Service each day and that practice was followed in the ordinary course of business for the service herein attested to (C.C.P. § 1013(a)).
- BY FACSIMILE: (C.C.P. § 1013(e)(f)) and by e-mail
- BY FEDERAL EXPRESS: I caused such envelopes to be delivered by air courier, with next day service, to the offices of the addressees. (C.C.P. § 1013(c)(d)).
- BY PERSONAL SERVICE: I caused such envelopes to be delivered by hand to the offices of the addressees. (C.C.P. § 1011(a)(b)).

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 20, 2008, at Costa Mesa, California.

Rudi L. Wilson

**McKinney v. Apollo Group, Inc., et al.
USDC, Southern – Case No. 07-CV-2373**

<p>Chad McKinney Pro Se 6266 Madeline Street, Apt. #61 San Diego, CA 92115 (619) 634-3566</p>	<p>Plaintiff, Pro Se</p>
<p>United States District Court Attention: Hon. Judge William Q. Hayes Courtroom 4 880 Front Street, Room 4290 San Diego, CA 92101-8900 (619) 557-5600</p>	<p>Courtesy Copy</p>

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